IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11008 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANT NARSINHBHAI PATEL

Versus

REGIONAL PASSPORT OFFICE

Appearance:

1. Special Civil Application No. 11008 of 2002

MR RA PATEL for Petitioner No. 1

MR DN PATEL for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 23/12/2002

ORAL JUDGEMENT

1. Rule. Mr.N.J.Shah, learned Counsel appearing for Mr.D.N.Patel waives service of notice of rule on behalf of respondent No.1. Ms.Davawala, learned Counsel appearing for respondents No.2 and 3 waives service of notice of rule.

2. With the consent of the parties, the matter is taken up for final hearing today. The short point involved in this petition is what should be the mode and method of sending the passport by the passport authority to the person concerned, who is entitled to have the delivery of the passport.

3. The short facts of the case are that the petitioner had applied for passport and it is the case of the passport authority that the passport was sent to the petitioner by speed post and the passport authority has not received the passport back as undelivered from the postal department and, therefore, it is assumed that the passport must have been delivered to the addressee, who is the petitioner herein.

4. The petitioner has approached before this Court by making grievance that till today the passport is not delivered to him. Upon the notice issued to the postal department, it has been submitted that since they are maintaining the record of speed post for a period of six months, the record is not available and, therefore, it is difficult to make a positive statement as to whether the passport is delivered to the addressee or the same is sent back to the passport authority. The passport officer has filed the affidavit today, stating that since in the record of his office there is no reference to the receipt of the passport back as undelivered, it is assumed that the passport must have been delivered to the addressee.

5. Under these circumstances, this Court is required to examine the proper mode and method of delivering the passport by the passport authority to the person concerned, who is entitled to have the delivery of the passport. It cannot be disputed that the passport is a property and it must be properly delivered to the person concerned. If the passport officer sends the passport to the person concerned through postal department, may be by "Regd. A.D." or by "Speed Post", the postal department acts as the agent of passport officer and, therefore, it is the duty of the passport officer to ensure that whether the postal department has delivered the passport to the addressee or the person concerned or not. In the present case, on account of the delay on the part of the

petitioner, since the record is destroyed, the postal department is unable to give proper material to this Court regarding the actual delivery or return of the passport. It is also accepted that if it is a matter of delivery of the passport, a special care should be taken by the postal department to ensure that the passport is delivered to the addressee and if the addressee is not available or otherwise, the passport is returned to the office of the passport officer.

6. So far as the petitioner is concerned, the petitioner is made to suffer on account of not taking proper care by the office of the passport officer and also on account of not maintaining the record by the postal department. Therefore, the petitioner, as observed by the passport officer in his affidavit, may apply for fresh passport and if such application is made by the petitioner for passport within a period of 10 days from today, the same will be considered as per the statement made by the passport officer in para 7 of his affidavit-in-reply and the passport may be issued to the petitioner within two weeks from the date of receipt of such application as per the statement made.

7. Before parting with this petition, I would like to observe that henceforth the passport officer shall take due care to ensure that the passport is delivered to the addressee by the postal department and the proof of delivery may be retained by the office of the passport officer. Similarly, the postal department may also take special care for handling the delivery of the passport and may forward the proof to the office of the passport officer of delivery of the passport or if the passport is not delivered within a reasonable time the passport may be returned to the office of the passport officer as undelivered. Necessary steps shall be taken by respondents No.1 and 2 for issuing instructions for compliance of the observations made by this Court.

8. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs. Direct service is permitted.

23-12-2002 (Jayant Patel, J.)

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